A

CHONG SUI JIN & ORS

v.

JERAMAS SDN BHD & ANOR AND ANOTHER APPEAL

B

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
SURIYADI HALIM OMAR JCA
HASAN LAH JCA
C [CIVIL APPEAL NO S-01-19-2006 & S-01-20-2006]
24 MARCH 2008

CIVIL PROCEDURE: *Locus standi - Action for injunction - To restrain defendants from developing land initially allocated for public*
D *purposes and car parks - Whether plaintiffs had threshold or substantive locus standi - Whether plaintiffs' private interest infringed - Whether bona fide serious issue to be tried*

In the plaintiffs' appeals herein the issue was whether the plaintiffs
E had the *locus standi* to bring the action against the defendants to restrain them from developing a few parcels of land ('the said land') that were initially allocated for public purposes and car parks. The plaintiffs who were the purchasers of shop houses built in a development project in which the said land was expressly
F reserved for the aforesaid purpose, claimed that their right was derived from their interest as ratepayers and that the said land was held in trust for them. The said land vested in the Majlis Perbandaran Tawau ('the Majlis') was kept in trust to keep the same open or control the use of the same for the plaintiffs'
G benefit. It then transpired that the Majlis entered into a joint venture agreement with Aggasf Construction Sdn Bhd ('ACSB') and Jeramas Sdn Bhd ('JSB') to develop the said land for commercial gains. The JC held that as general ratepayers, the plaintiffs' private rights were not interfered with and they suffered
H no damages. Also, the nature of the trust was not a 'true trust' but a 'trust in the higher sense' and was not justiciable at the instance of the plaintiffs. The JC dismissed the plaintiffs' applications for interim injunctions.

I

Held (allowing the appeals)
Per Hasan Lah JCA delivering the judgment of the court:

(1) The issue of *locus standi* raised herein related to the threshold *locus standi* and not the substantive *locus standi* (see *Ketua Pengarah Jabatan Alam Sekitar v. Kajing Tubek*, per Gopal Sri Ram JCA). The function of the court was only to decide whether the issue disclosed a *bona fide* serious issue to be tried. The court must refrain from making any determination on the issue at the application of an injunction stage. (paras 24 & 25)

(2) The plaintiffs had genuine private interest to be furthered and protected. They were adversely affected by the decision of the Majlis to develop the said land. They bought the respective shop houses on the basis that the said land was expressly reserved for public spaces and car parks. In the circumstances the court should adopt a fairly lenient view of the plaintiffs' standing to sue in the proceedings. (para 31)

(3) The function of the High Court was only to determine whether there was a serious question on *locus standi*. The JC instead made a final determination on the said issue. The JC erred when she did not follow the guidelines stated in *Keet Gerald Francis Noel John v. Mohd Noor Abdullah*. (para 32)

Bahasa Malaysia *Translation Of Headnotes*

Dalam rayuan-rayuan di sini, isu yang berbangkit adalah sama ada plaintif-plaintif mempunyai *locus standi* untuk membawa tindakan terhadap defendan-defendan bagi menghalang mereka dari membangunkan beberapa bidang tanah ('tanah tersebut') yang pada dasarnya diperuntuk untuk tujuan maksud awam dan tempat letak kereta. Plaintif-plaintif yang merupakan pembeli-pembeli rumah kedai yang didirikan atas satu projek pembangunan di mana peruntukan penggunaan tanahnya sama seperti di atas, mendakwa bahawa hak mereka berbangkit dari kepentingan mereka selaku pembayar cukai dan bahawa tanah tersebut dipegang sebagai amanah untuk mereka.Tanah tersebut yang terletakhak ke atas Majlis Perbandaran Tawau ('Majlis') adalah dipegang sebagai amanah bagi memastikan ia sentiasa terbuka atau dikawal penggunaannya untuk manfaat plaintif-plaintif. Bagaimanapun, apa yang berlaku ialah Majlis telah memeterai satu perjanjian usahasama dengan Aggasf Construction Sdn Bhd ('ACSB') dan Jeramas Sdn Bhd ('JSB') bagi membangunkan tanah tersebut

untuk beberapa tujuan komersial. Pesuruhjaya Kehakiman memutuskan bahawa sebagai pembayar cukai biasa, hak peribadi plaintif-plaintif tidak terjejas dan mereka tidak menanggung apa-apa kerugian. Juga, amanah yang diungkitkan itu tidak bersifat 'amanah sebenar' tetapi hanyalah 'amanah dalam erti yang lebih tinggi' dan kerana itu bukan sesuatu yang justiciable di tangan plaintif-plaintif. Atas alasan-alasan ini Pesuruhjaya Kehakiman telah menolak permohonan plaintif-plaintif untuk injunksi interim.

Diputuskan (membenarkan rayuan-rayuan)

Oleh Hasan Lah HMR menyampaikan penghakiman mahkamah:

(1) Isu *locus standi* yang dibangkitkan di sini adalah berkaitan *locus standi* puncak dan bukannya *locus standi* substantif (lihat *Ketua Pengarah Jabatan Alam Sekitar v. Kajing Tubek*, oleh Gopal Sri Ram HMR). Fungsi mahkamah hanyalah untuk memutuskan sama ada isu telah menyerlahkan satu isu *bona fide* yang boleh dibicarakan. Mahkamah harus mengelak dari membuat apa jua keputusan terhadap isu di peringkat permohonan injunksi.

(2) Plaintif-plaintif memiliki kepentingan peribadi tulen yang perlu diberi perhatian dan dilindungi. Mereka telah terjejas oleh keputusan Majlis untuk membangunkan tanah tersebut. Mereka membeli rumah-rumah kedai berkenaan atas dasar tanah tersebut secara nyata direzabkan untuk padang awam dan tempat letak kereta. Atas alasan-alasan ini, mahkamah harus mengambil pandangan yang lembut terhadap keterbolehan plaintif untuk mendakwa di dalam prosiding.

(3) Fungsi Mahkamah Tinggi hanyalah untuk menentukan sama ada terdapat satu persoalan serius atas perkara *locus standi*. Pesuruhjaya Kehakiman malangnya telah membuat satu keputusan mukamad terhadap isu berkenaan. Pesuruhjaya Kehakiman silap bilamana gagal menuruti pedoman yang dinyatakan di dalam *Keet Gerald Francis Noel John v. Mohd Noor Abdullah*.

Case(s) referred to:

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors [1995] 1 CLJ 461 SC ***(refd)***

Fawziah Holdings Sdn Bhd v. Metramac Corporation Sdn Bhd & Another [2006] 1 CLJ 996 CA ***(refd)***

Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***

Iskandar Gayo & Ors v. Datuk Joseph Pairin Kitingan & Ors [1996] 3 CLJ 713 HC ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor Abdullah [1995] 1 CLJ 293 CA ***(refd)***
Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors And Other Appeals [1997] 4 CLJ 253 CA ***(refd)***
Knight v. Knight [1840] 49 ER 58 ***(refd)***
Lim Cho Hock v. Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh [1980] 1 LNS 43 ***(refd)***
Tan Sri Hj Othman Saat v. Mohamed Ismail [1982] 1 LNS 2 ***(refd)***
Tito v. Waddell (No 2) [1977] 1 Ch 106 ***(refd)***

Legislation referred to:
Local Government Ordinance, s. 38(1)
Rules of the High Court 1980, O. 29 r. 1

For the appellants - Dato' Simon KY Shim (Wilson Lim with him); M/s Shim, Pang & Co
For the 1st respondent - Brenndon Keith Soh; M/s Ronny Cham & Co

[Appeal from High Court, Tawau; Civil No: T(21) 52-2005]

Reported by Usha Thiagarajah

JUDGMENT

Hasan Lah JCA:

[1] On 25 June 2007 we heard these two appeals and after hearing submissions made by the parties we allowed the appeals. We now give our reasons for the decision.

Background

[2] By a development plan duly approved by the then Lembaga Bandaran Tawau *via* DP12/73 in or about March 1973 ("the first development plan") for the development of commercial shop houses in Bandar Sabindo Tawau, several parcels of land described under TL 107522985 and TL 107523008 had been set aside for the purpose of maintaining open public spaces (hereinafter referred to as "the said land"). The Master Title described under TL 106290831 had been sub-divided into various sub-divided titles including that of the said land.

[3] The shop houses and infrastructures had been built on the basis of the first development plan and sub-division plan which had clearly identified that the said land had been expressly reserved for public spaces and/or car parks. It was also on this basis that the shop houses were sold to the respective purchasers.

[4] The ten appellants (the plaintiffs in the High Court) are the registered owners of seven of the shop houses constructed in the said project and as the registered owners of the shop houses they claimed that they are the ratepayers, inhabitants, users and beneficiaries of the public space, public playing grounds, parks and gardens within the Tawau Municipal area including in particular the open public space at Bandar Sabindo.

[5] By reason of the plaintiffs being the registered owners, ratepayers and inhabitants as well as beneficiaries of the said land, they claimed they have legitimate and special interest in the same over and above other members of public within the Tawau Municipal area and they have acquired a common right to the use and enjoyment of the said land. The said land was vested in the Majlis Perbandaran Tawau ("the Majlis") in trust to keep the same open or control the use of the same for the plaintiffs' benefit. The said land is therefore trust property. The Majlis is trustee and the plaintiffs are the beneficiaries of the same.

[6] On or about 16 December 1996 the Majlis entered into a joint venture agreement with Aggasf Construction Sdn. Bhd. ("ACSB") and Jeramas Sdn. Bhd. ("JSB") to develop the said land on a joint venture basis into commercial shoplots for commercial gains.

[7] On or about 27 May 2005 the Majlis approved two development plans ("the second development plans") submitted by ACSB and JSB in respect of the said land and ACSB and JSB subsequently commenced works thereon.

[8] On 14 December 2005 the ten plaintiffs commenced the following two suits in the High Court of Sabah and Sarawak in Tawau:

(a) Suit No. T(21)-52-2005 against JSB and the Majlis; and

(b) Suit No. T(21)-53-2005 against ACSB and the Majlis.

[9] The 2 suits are similar in term of facts as well as nature of claims and relief. The plaintiffs claimed for the following relief from JSB and ACSB:

(a) a declaration that the two joint venture agreements are invalid as being *ultra vires* the Local Government Ordinance 1961 and the Tawau Municipal Council Instrument 1983;

(b) a declaration that the second development plans submitted by JSB and ACSB relating to the said land and approved by the Majlis are invalid;

(c) an order that the second development plans be set aside;

(d) an order restraining JSB and ACSB from entering, trespassing, remaining and carrying out construction works on the said land together with the adjoining lands;

(e) an order compelling JSB and ACSB to forthwith dismantle, remove and clear all plants, equipments and materials laden on the said land.

[10] On the same day the plaintiffs filed summons-in-chambers in both suits under O. 29 r. 1 of the Rules of the High Court applying for interim injunctions to restrain JSB and ACSB from entering, trespassing, remaining or carrying out construction on the said land and an order to compel them to remove equipments and materials from the said land.

[11] The parties agreed that the issue of *locus standi* of the plaintiffs should be addressed first. Since the two applications are substantially identical, in that the plaintiffs are the same in both suits, the parties have agreed that the issue be decided together.

[12] On 1 March 2006, the learned Judicial Commissioner dismissed the injunction application. The plaintiffs' notices of appeal in both appeals were lodged on 6 March 2006.

[13] The plaintiffs had then orally moved the High Court for an Erinford Injunction pending their appeal to this court against the order of the High Court dated 1 March 2006.

[14] The learned Judicial Commissioner refused to entertain the appellants' oral application and had instead directed the appellants to file a written submission for an Erinford Injunction and had then set the hearing date on 4 April 2006.

[15] In view of the urgency of the matter the plaintiffs had then moved this court instead for an Erinford Injunction on 8 March 2006 but the aforesaid application was dismissed by this court on 4 April 2006.

A **In The High Court**

[16] On the issue of the *locus standi* of the plaintiffs to bring the action, counsel for the plaintiffs formulated their claim for *locus standi* on two prongs namely:

B (a) "their right is derived from their interest as rate payers";

(b) "from the trust property of which they are inhabitants, users and beneficiaries under s. 38 of the Local Government Ordinance …"

C **[17]** On the first issue the learned Judicial Commissioner, relying on the majority decision in *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63, held that the plaintiffs did not have *locus standi* to bring these actions D against the defendants. As general rate-payers in the municipality their private rights have not been interfered with and they did not suffer any special damages peculiar to them.

[18] With regard to the second issue ie, whether the plaintiffs are E beneficiaries under a trust the learned Judicial Commissioner held that, as the nature of the trust was such that it was not a 'true trust' but a 'trust in the higher sense', it was not justiciable at the instance of the plaintiffs.

The Appeal

F **[19]** Learned counsel for the plaintiffs submitted that the issue of *locus standi* should not be an issue to be decided at the present stage but rather it should only be considered whether it raises a serious question to be tried. As such the learned Judicial G Commissioner should have refrained from making any final determination of this issue. In support of that he cited the cases of *Keet Gerald Francis Noel John v. Mohd. Noor bin Abdullah* [1995] 1 CLJ 293 and *Alor Janggus Soon Seng Trading Sdn. Bhd. & Ors v. Sey Hoe Sdn. Bhd. & Ors* [1995] 1 CLJ 461.

H **[20]** It was the contention of learned counsel for the plaintiffs that the plaintiffs as ratepayers had the requisite *locus standi* to commence the present action against the defendants in common law. In support of that he cited several English authorities and the I local cases of *Lim Cho Hock v. Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh* [1980] 1 LNS 43 and *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* [1982] 1 LNS 2.

[21] Learned counsel for the plaintiffs further submitted that as they are ratepayers, inhabitants, users and beneficiaries of the said land which is vested in the Majlis who shall keep the same in trust, for the benefits of the plaintiffs within the meaning of s. 38(1) of the Local Government Ordinance, that s. 38 alone gives the plaintiffs the requisite *locus standi* to sue.

[22] Learned counsel for ACSB, on the other hand, submitted *inter alia* that there is no creation of a 'true trust' by s. 38(1) of the Local Government Ordinance. In support of that he cited the House of Lords decision in *Knight v. Knight* [1840] 49 ER 58 and the decision of this court in *Fawziah Holdings Sdn. Bhd v. Metramac Corporation Sdn. Bhd. & Another* [2006] 1 CLJ 996. According to the learned counsel that s. 38(1) only creates a "trust in the higher sense" which is not legally enforceable. He referred to the decisions in *Tito v. Waddell (No. 2)* [1977] 1 Ch 106 and *Iskandar Gayo & Ors v. Datuk Joseph Pairin Kitingan & Ors* [1996] 3 CLJ 713.

[23] It was also submitted by learned counsel for ACSB that the plaintiffs do not have *locus standi* to bring this action against the defendants in common law because the plaintiffs have not suffered any special damage over and above the ordinary ratepayers, inhabitants, users and registered owners of the said land. In support of that he referred to the majority decision of the Supreme Court in G*overnment of Malaysia v. Lim Kit Siang (supra)*.

Decision Of The Court Of Appeal

[24] Since threshold *locus standi* is the only issue in this appeal it is necessary and desirable to understand about it and for this this court has given an explanation in *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors & Other Appeals* [1997] 4 CLJ 253 on the subject. At p. 276 Gopal Sri Ram JCA has made the following observation:

> Absent any statutory provision, *locus standi,* or standing to bring an action for a declaration in public law, is a matter of pure practice that is entirely for the courts to decide. Courts of some countries adopt a fairly lenient stance, while others insist on a stricter approach. In the United States, the pendulum of *locus standi* has swung from one extreme to another depending upon current judicial impression. Compare, for example, *Flast v. Cohen* [1968] 392 US 83 with *Valley Forge College v. Americans United* [1982] 454 US 464.

A The choice appears to really depend upon the economic, political and cultural needs and background of individual societies within which the particular court functions. As these are not uniform in all countries, and fluctuate from time to time within the same country, views upon standing to sue in public law actions for declaratory or injunctive relief vary according to peculiar circumstances most suited to a particular national ethos.

B

I make these introductory remarks to demonstrate what I consider to be a vital policy consideration. It is this. When our courts come to decide whether to grant standing to sue in particular case, they must be extremely cautious in applying decisions of the courts of other countries because the reasons for granting or refusing standing in those other jurisdictions may depend upon the wider considerations to which I have referred in the preceding paragraph.

C

D In public law – and, in so far at least as the appellants in the first and second appeal are concerned, the summons in the present instance lies in public law – there are two kinds of *locus standi.* The first is the initial or threshold *locus standi*; the second is the substantive *locus standi.*

E *Threshold locus standi refers to the right of a litigant to approach the court in relation to the facts which form the substratum of his complaint. It is usually tested upon an application by the defendant to have the action struck out on the ground that the plaintiff, even if all that he alleges is true, cannot seek redress in the courts.*

F Although a litigant may have threshold *locus standi* in the sense discussed, he may, for substantive reasons, be disentitled to declaratory relief. This, then, is substantive *locus standi*. The factors that go to a denial of substantive *locus standi* are so numerous and wide ranging that it is inappropriate to attempt an

G effectual summary of them. Suffice to say that they range from the nature of the subject matter in respect of which curial intervention is sought to those settled principles on the basis of which a court refuses declaratory or injunctive relief.

H **[25]** Looking at the arguments in the High Court and the submissions made to us we have no doubt that the issue of *locus standi* raised in this appeal related to the threshold *locus standi* and not the substantive *locus standi.* The function of the court at this stage is only to decide whether this issue discloses a *bona fide* serious issue to be tried and the court must refrain from making

I any determination on the issue at this stage as this is only an application for an injunction. This has been clearly stated by

Jemuri Serjan CJ (Borneo) in *Alor Janggus Soon Seng Trading Sdn. Bhd. & Ors v. Sey Hoe Sdn. Bhd. & Ors* [1995] 1 CLJ 461 at p. 485:

> At an interlocutory proceeding for an injunction, the court is not called upon nor is it desirable for the court to decide finally on the rights of the parties but the court must be satisfied that there is a serious issue to be tried. The court is not justified in embarking upon anything resembling the trial of the action upon conflicting affidavits nor to evaluate the strength of either party's case. This is settled law now hallowed by the famous word of Lord Diplock in *American Cyanamid*'s case:
>
> > … It is no part of the court's function at this state of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations.

[26] There are two views on the *locus standi* to sue for a declaration in public law proceedings in Malaysia. The common law authorities on individual standing to sue have been applied by the Malaysian courts on numerous occasions. In *Lim Cho Hock v. Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh (supra)* the plaintiff who was a member of Parliament for the parliamentary constituency of Ipoh as well as a member of the Perak State Legislative Assembly for the constituency of Kepayang and a ratepayer within the Council area sought declaration that the offices of Menteri Besar and President of the Council could not be held by the same individual, that the appointment of the Menteri Besar as President of the Council was inoperative and null and void, and that the State Authority had exceeded its powers in making this appointment. Abdoolcader J (as he then was) reviewed extensively numerous authorities on the issue of *locus standi* in the Commonwealth and concluded that:

> In the light of the authorities I have discussed, I can see no reason to deny standing to the plaintiff as a ratepayer to institute and seek the relief he does in these proceedings.

[27] Abdoolcader J sat as a Federal Court Judge in the case of *Tan Sri Haji Othman Saat v. Mohamed bin Ismail (supra)* and he took another opportunity to review cases relating to private citizen's right to sue. In that case the respondent and 183 other persons had applied for land in Mersing, Johore but with no

response for some eight years. The respondent learnt that land in the area had been alienated to a number of people, including the appellant, who was at all material times the Menteri Besar of the State of Johore and other personages in the upper echelon of the administrative service. The respondent applied for declarations basically impugning the validity of the alienation of the land and named as respondents thereto the State Director of Lands and Mines and the Government of the State of Johore in addition to the appellant. The appellant applied to have the proceedings struck out primarily on a challenge to the respondent's standing to sue and also on certain procedural objections. The appellant's application was dismissed in the High Court and he appealed to the Federal Court on the issue of the respondent's *locus standi*.

Abdoolcader J approved *Lim Cho Hock*'s case and endorsed the concept of liberalizing the scope of individual standing and gave lengthy reasons why the threshold of *locus standi* must be lower nowadays. The learned judge said:

> The sensible approach in the matter of *locus standi* in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of a contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice. When it comes however to the question of discretion on a consideration of the substantive application, it may well be proper in particular cases to refuse a remedy to persons who, though they may have standing as a matter of jurisdiction on the lines we have indicated, do not merit it, perhaps because, *inter alia*, others are more directly affected, or the plaintiff himself is fundamentally not.

[28] In *Government of Malaysia v. Lim Kit Siang (supra)* the respondent who was a Member of Parliament and the leader of the opposition had applied for a declaration that the letter of intent issued by the government to United Engineers (M) Bhd. (UEM) in respect of the North and South Highway contract is invalid and for a permanent injunction to restrain UEM from signing the contract with the government. The plaintiff filed his suit in the Penang High Court on 18 August 1987 and on the same day he applied by way of *ex parte* summons-in-chambers for an interim injunction against UEM to restrain it from signing the contract. Edgar Joseph Jr. J who heard the application refused it. On appeal to the Supreme Court, the court, in an oral judgment

on 25 August 1987, ordered the interim injunction to be issued with liberty to apply and at the same time directed an early trial of the suits.

UEM and the government applied to the High Court to have the interim injunction set aside and the suits struck out on the ground that they disclosed no reasonable cause of action and also for lack of *locus standi*, in addition to being frivolous, vexatious and an abuse of the court's process. The application were heard by VC George J who dismissed them. Both UEM and the government appealed to the Supreme Court.

[29] On the question of *locus standi* the majority held that the respondent could not have *locus standi*, whether as a politician, a road and highway user or a taxpayer. At p. 69, Salleh Abas LP made the following observation:

> What is the law on *locus standi*?
>
> A clear statement of it was stated by Buckley J in *Boyce v. Paddington Borough Council* [1903] 1 Ch 109 as follows:
>
> > A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with (eg, where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.
>
> The above passage was accepted by the House of Lords in *Gouriet v. Union of Post Office Workers & Ors* [1977] 3 All ER 70 (see the speeches of Lord Edmund Davies and Lord Fraser). That was the law of *locus standi* declared by the highest court in England in 1977. However, six months later the law was changed as a result of a new procedure of judicial review introduced by Order 53 of the U.K. Supreme Court Rules.

And further down he said:

> The study of the development of the law on *locus standi* in England is very interesting. During the tenureship of Lord Denning MR, it appears that the Court of Appeal by a spate of judicial activism widened the law on *locus standi* by dispensing with

A the requirements of private right or private injury caused to the complaining citizen. (See *Reg. v. Commissioner of Police of the Metropolis, ex parte Blackburn* [1968] 2 WLR 983; *Blackburn v. Attorney-General* [1971] 1 WLR 1037; *Attorney-General (on the relation of McWhirter) v. Independent Broadcasting Authority* [1973] All ER 689 at p. 698 and [1973] QB 629 and *Reg. v. Greater London Council, ex parte Blackburn and Another* [1976] 1 WLR 558 at p. 559).

This was the view then prevailing in English law in the late sixties and seventies until it was rejected by the House of Lords in 1977 in *Gouriet*'s case. This case restored the law on *locus standi* to what was formerly stated by Buckley J. in *Boyce*'s case. However, the restoration was shortlived because six months later a new procedure by way of judicial review, which combines applications for the prerogative orders of *mandamus, certiorari* and prohibition with applications for declaratory and injunctive remedies, was introduced by Order 53 of the U.K. Supreme Court Rules.

[30] In his judgment also Salleh Abas LP referred to the decisions of Abdoolcader J in *Lim Cho Hock*'s case and *Tan Sri Haji Othman v. Mohamed bin Ismail.* At p. 74 he said:

In my judgment, these two cases represent the high water marks of the law of *locus standi* in Malaysia, beyond which the court should be careful to tread. Both these cases can be justified on the basis that the plaintiff had a genuine private interest to be furthered and protected.

[31] In the instant case the learned Judicial Commissioner was of the view that as general rate-payers in the municipality the plaintiffs' private rights have not been interfered with and that they suffered no special damages peculiar to them. With the greatest respect to the learned Judicial Commissioner we are of the view that the plaintiffs in the instant case have genuine private interest to be furthered and protected. If the plaintiff in *Lim Cho Hock*'s case who was also a ratepayer within the council area was held to have a standing to sue the plaintiffs in the instant case should also be held to have a *locus standi* to sue in these proceedings. Furthermore we are of the view that the plaintiffs in the instant case are in a stronger position than the plaintiffs in *Lim Cho Hock*'s case and *Lim Kiat Siang*'s case because the plaintiffs as the registered owners of the properties in Bandar Sabindo within the Tawau Municipal and who are the inhabitants, and users of the public space, public playing grounds, parks, car parks and road reserve at Bandar Sabindo are within a much

narrower class of people. Furthermore they are also claiming that s. 38 of the Local Government Ordinance gives them the requisite *locus standi* to sue. In our view the plaintiffs are the persons who are adversely affected by the decision of the Majlis to develop the said land. They have bought the respective shophouses which have been constructed in accordance with the first development plan which clearly identified that the said land had been expressly reserved for public spaces and car parks. It was on that basis that they bought those shophouses. Under the circumstances we are of the view that the court should adopt a fairly lenient view of the plaintiffs' standing to sue in these proceedings.

[32] In addition, in *Lim Kit Siang*'s case there was also an application by UEM and the government to have the suit struck out on the ground that they disclosed no reasonable cause of action and also for lack of *locus standi*. In the instant case the issue of *locus standi* was raised in the plaintiffs's application for interlocutory injunction and there was no application by the defendants to have the suits struck out on the ground that the plaintiffs have no *locus standi*. As such the function of the High Court in the instant case at that stage was to determine only whether there was a serious question on *locus standi*. The learned Judicial Commissioner did not do that but instead she made a final determination on the issue of *locus standi*. In our view the learned Judicial Commissioner had erred when she did not follow the guidelines stated by this court in *Keet Gerald Francis Noel John*'s case. It is also our view that from the submissions made by the parties on the issue of *locus standi* the High Court should have held that there was a serious issue raised on *locus standi* and the High Court should then move to the next step of its inquiry in accordance with the guidelines set out in *Keet Gerald Francis Noel John*'s case.

[33] For the reasons stated above we allowed the appeals by the plaintiffs in the two cases with costs to follow the event of the summons-in-chambers. The orders of the High Court were set aside. It was also ordered that the summons-in-chambers dated 14 December 2005 be remitted to the High Court for hearing on the merits and both suits be consolidated and be heard and disposed off together.